

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

MILAN PUSKAR HEALTH RIGHT,
LAWSON KOEPPPEL, ALINA LEMIRE,
and CARRIE WARE,

Plaintiffs,

v.

Civil Action Number: 3:21-cv-00370
Honorable Robert C. Chambers

BILL J. CROUCH, in his official capacity as
Cabinet Secretary of the West Virginia
Department of Health and Human Resources,
JOLYNN MARRA, in her official capacity as
Interim Inspector General and Director of the
Office of Health Facility Licensure and Certification,
STEVE HARRISON, in his official capacity as
Clerk of the House of Delegates and Keeper of the Rolls,
and RICH OLSEN, in his official capacity as Director
of the Division of Legislative Services,

Defendants.

DEFENDANTS' MOTION TO SUPPLEMENT THE RECORD

Plaintiffs have moved this court to enjoin enforcement of Senate Bill 334 in part on the grounds that W. Va. Code § 16-64-10(d) is vague as to the full array of harm reduction services that a syringe services program must offer. The court held a hearing on Plaintiff's motion on July 8, 2021. At the hearing, Defendants argued that Senate Bill 334 and the related OHFLAC emergency rule are clear as to the required services, but that OHFLAC is willing to modify its proposed emergency rule to add further clarity. The court invited Defendants to draft modifications to the proposed emergency rule, but to refrain from filing the emergency rule with the West Virginia Secretary of State until further notice from the court.

Accordingly, OHFLAC has drafted the attached modifications to the proposed emergency rule, and respectfully moves the court to supplement the record with this modified draft for the

court's consideration. OHFLAC stands ready to file the attached emergency rule with the Secretary of State as soon as the court permits.

Respectfully submitted,

BILL J. CROUCH, in his official capacity as
Cabinet Secretary of the West Virginia
Department of Health and Human Resources,
JOLYNN MARRA, in her official capacity
as Interim Inspector General and Director of
the Office of Health Facility Licensure and
Certification, STEVE HARRISON, in his
official capacity as Clerk of the House of
Delegates and Keeper of the Rolls, and RICH
OLSEN, in his official capacity as Director of
the Division of Legislative Services,

By Counsel,

/s/ David R. Pogue

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Clerk of the House of Delegates and Keeper of the Rolls,

Defendants.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendants, does hereby certify on this the 13th day of July, 2021, that a true copy of the foregoing “Defendants’ Motion to Supplement the Record” was filed with the Clerk of Court using the CM/ECF system, which will send notification of such filings to the following CM/ECF participants:

Loree Stark (WVSB No. 12936)
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Counsel for Plaintiffs

/s/ David R. Pogue
David R. Pogue (WVSB No. 10806)